

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: )  
 ) CHAPTER 13  
MARCUS ARMOUR OLIVER & )  
CHUDNEY WILLIAMS OLIVER, ) CASE NO. 14-61319-WLH  
)  
Debtors. )  
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MARCUS ARMOUR OLIVER & )  
CHUDNEY WILLIAMS OLIVER, )  
)  
Movants. )  
)  
vs. ) CONTESTED MATTER  
)  
OCWEN LOAN SERVICING, )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC., )  
AS NOMINEE FOR SOUTHSTAR )  
FUNDING, LLC, ITS SUCCESSOR )  
AND ASSIGNS, US BANK NATIONAL )  
ASSOCIATION AS TRUSTEE )  
FOR RASC 2007-KS2, C/O GMAC )  
MORTGAGE, LLC )

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the above captioned Debtor, **MARCUS ARMOUR OLIVER & CHUDNEY WILLIAMS OLIVER** have filed a *Motion to Value Collateral and Modify Rights of Ocwen Loan Servicing, US Bank National Association as Trustee for RASC 2007-KS2, c/o GMAC Mortgage, LLC, Pursuant to 11 U.S.C. § 506(a) and § 1322* and related papers with the Court to “Strip off” and extinguish Respondent’s wholly unsecured second mortgage lien pursuant to 11 U.S.C. § 506(a).

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on this

Motion in **Courtroom 1403**, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia **on September 17, 2014 at 9:30AM.**

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: August 22, 2014

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/s/  
Richard K. Valldejuli, Jr.  
Georgia Bar Number 723225  
Attorney for Debtors

R & R Law Group  
2199 Lenox Road, Suite A  
Atlanta, GA 30324  
(404) 636-9957

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**MOTION TO VALUE COLLATERAL AND MODIFY RIGHTS  
OF OCWEN LOAN SERVICING, US BANK NATIONAL ASSOCIATION  
AS TRUSTEE FOR RASC 2007-KS2, c/o GMAC MORTGAGE, LLC  
PURSUANT TO 11 U.S.C. § 506(a) & § 1322**

**COME NOW, MARCUS ARMOUR OLIVER & CHUDNEY WILLIAMS  
OLIVER**, the Debtors/Movants herein (the “Movants”) in the above-styled case and  
hereby move this court to determine the secured status and to modify the rights of  
**OCWEN LOAN SERVICING, US BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR RASC 2007-KS2, c/o GMAC MORTGAGE, LLC** (hereinafter  
“Respondent”) pursuant to 11 U.S.C. § 506(a) and § 1322, and Bankruptcy Rules 3012  
and 9014; and in support thereof show to the Court the following:

1.

The above styled bankruptcy case was commenced by the filing of a voluntary Chapter 13 petition in this Court on June 9, 2014.

2.

Pursuant to Rule 7004(h)(2) of the Federal Rules of Bankruptcy Procedure, the Respondent, an insured depository institution, may be served by certified mail, sent to an officer of the institution, thus service upon the following is appropriate:

Ocwen Loan Servicing  
Attn: William Erbey – CEO  
1661 Worthington Rd.  
West Palm Beach, FL 33409

US National Bank Association  
As Trustee for RASC 2007-KS2, c/o GMAC MORTGAGE, LLC  
Attn: Richard K. Davis – CEO  
425 Walnut St.  
Cincinnati, OH 45202

3.

Movants own and resides on real property located at 2445 Ridge Lake Drive, Villa Rica, Georgia, Douglas County, (the “Residence”) in which the estate has an interest, and is more particularly described as follows:

ALL TRACT OR PARCEL OF LAND LYING AND BEING IN LAD LOT 178 OF THE 2<sup>ND</sup> DISTRICT, 5<sup>TH</sup> SECTION DOUGLAS COUNTY, GEORGIA, BEING LOT 130, UNIT TWO OF STILLWATER AT MIRROW LAKE SUBDIVISION, AS PER PLAT THEROF RECORDED IN PLAT BOOK 24, PAGE 278, DOUGLAS COUNTY GEORGIA RECORDS, WHICH RECORDED PLAT IS INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF THIS DESCRIPTION.

4.

Movants’ ownership interest in the residence is subject to two (2) separate mortgages in the form of deeds to secure debt as follows:

(a) According to the Superior Court Clerk Douglas County Deed Records Book, Mortgage Electronic Registration Systems, Inc., holds the first mortgage. The debt is listed on Schedule D as Ocwen Loan Servicing with a claim in the amount of 211,200.00. Ocwen Loan Servicing has not filed a Claim in this case, but a copy of the assignment of security deed is attached hereto for convenience of record as "Exhibit A".

(b) According to the Superior Court Clerk Douglas County Deed Records Book, , US Bank National Association as Trustee for RASC 2007-KS2, in c/o GMAC Mortgatge, LLC holds the second mortgage. The debt is listed on Schedule D as Ocwen Loan Servicing based on Movants' monthly mortgage account statement with a principle unpaid balance of \$52,981.00. Ocwen Loan Servicing has not filed a Claim in this case, but a copy of both the monthly mortgage statement and the assignment of security deed is attached hereto for convenience of record as "Exhibit B".

5.

The current value of the Residence is \$191,612.00 as evidenced by a valuation dated June 2, 2014 by Zillow.co and \$165,000.00 as valued by 2013 Douglas Couty Board od Assessors A copy of of both valuations are attached hereto as "Exhibit C".

6.

Pursuant to 11 U.S.C. § 506(a), Movants' second-priority mortgage held by Respondent referenced hereinabove is wholly unsecured; consequently, pursuant to U.S.C. §506(d), the lien is voidable.

7.

Respondent, holds a wholly unsecured and void second-priority junior lien, and should be ordered to execute a lien release pursuant to 11 U.S.C. §§ 506(a) and (d). The

U.S. Court of Appeals for the Eleventh Circuit held in *McNeal v. GMAC Mortgage, LLC (In re McNeal)*, 11-11325 (11th Cir. May 11, 2012) (published effective August 2, 2013), that the relief the Motion requests should be granted. *McNeal* concludes that *In re Folendore*, 862 F. 2d 1537 (11th Cir. 1989), is controlling precedent on this issue in this circuit.

**WHEREFORE**, based on the foregoing facts, Movants pray:

- (a) That the Court “Strip off” and extinguish Respondent’s wholly unsecured second mortgage lien pursuant to 11U.S.C. § 506(a).
- (b) That effective upon entry of discharge in the Debtors’ Chapter 13 case, the lien of Ocwen Loan Servicing, US Bank National Association as Trustee for RASC 2007-KS2, in c/o GMAC Mortgage, LLC evidenced by an assignment of security deed recorded July 18, 2012 at Deed Book 3035, page 994, in the Superior Court of Douglas County, Georgia, shall be avoided without further order pursuant to 11 U.S.C. § 506(d);
- (c) That Respondent’s claim be reclassified as a general unsecured claim to receive pro rata distribution with other general unsecured creditors through the Debtors’ Chapter 13 Plan, and;
- (d) For such other relief the Court finds appropriate.

This 23<sup>rd</sup> day of August, 2014

R & R Law Group  
2199 Lenox Road, NE, Suite A  
Atlanta, GA 30324  
(404) 636-9957

\_\_\_\_\_  
/s/  
Richard K. Valldejuli, Jr.  
Georgia Bar No. 723225  
Attorney for Debtors

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all parties in the foregoing matter with a copy of the foregoing ***Debtor's Motion to Value Collateral and Modify Rights of Ocwen Loan Servicing, Us Bank National Association As Trustee For Rasc 2007-Ks2, C/O GMAC Mortgage, LLC Pursuant to 11 U.S.C. § 506(a) and § 1322 and Notice of Assignment of Hearing***, by EFC transmission and/or depositing in the United States Mail, a copy of same in a properly addressed envelope with adequate postage thereon upon:

Nancy J. Whaley  
Standing Chapter 13 Trustee  
Suite 120, 303 Peachtree Center Avenue  
Atlanta, GA 30303

Ocwen Loan Servicing  
Attn: William Erbey – CEO  
1661 Worthington Rd.  
West Palm Beach, FL 33409  
(served via certified mail)

US National Bank Association  
As Trustee for RASC 2007-KS2, c/o GMAC MORTGAGE, LLC  
Attn: Richard K. Davis – CEO  
425 Walnut St.  
Cincinnati, OH 45202  
(served via certified mail)

CT Corporation  
Registered agent for US Bank National Association  
1201 Peachtree St., NE  
Atlanta, GA 30361

Corporate Service Co.  
Registered agent for Ocwen Loan Servicing  
100 Peachtree St.  
Atlanta, GA 30303

This 23<sup>rd</sup> day of August, 2014

\_\_\_\_\_  
/s/  
Richard K. Valldejuli, Jr.  
Georgia Bar No. 723225  
Attorney for Debtors

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